

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO JAVIER GONZALEZ-
LEON,

Defendant - Appellant.

No. 05-30357

D.C. No. CR-05-00026-EJL

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

Francisco Gonzalez-Leon appeals the sentence imposed following his guilty plea to illegal reentry of a deported alien, in violation of 8 U.S.C. § 1326(a).

Gonzalez-Leon, who brings this appeal to preserve his rights in the event the

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Supreme Court should ultimately decide to overturn *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), contends that the district court violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b)(2) and U.S.S.G. § 2L1.2(b)(1)(A) because of a fact—the prior commission of an felony drug-trafficking crime—neither charged in the indictment, proved beyond a reasonable doubt to a jury, nor admitted as part of the guilty plea. This contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005).

AFFIRMED.